International Tax | 22 November 2017

United Kingdom alert
Autumn budget 2017 announced

The UK Chancellor of the Exchequer delivered the government’s first Autumn Budget on 22 November 2017, against a backdrop of slower growth in the UK economy. The announcements are largely targeted at supporting the robustness of the UK tax system, while continuing to promote the UK as a favorable location for business. The Chancellor stated that draft legislation will be released in July 2018 for changes announced in the Autumn Budget, but legislation for measures that previously have been announced will be published in the draft Finance Bill on 1 December 2017.

This alert sets out the key measures relevant to foreign-owned groups. For detailed coverage and comment on the UK Autumn Budget 2017, visit Deloitte’s dedicated budget website at **www.ukbudget.com**.

Business tax

Corporation tax rate

The Chancellor echoed the commitment made previously to ensure that the UK remains competitive, by offering the lowest corporation tax rate in the G20. No changes were announced regarding the rate reduction to 17% from 1 April 2020, which previously was enacted.

WHT on royalty payments made to nonresidents

New rules are to be introduced to expand the circumstances in which withholding tax (WHT) is levied on royalty payments made to persons not resident in the UK, where these payments are made in connection with UK sales. The changes are specifically targeted at businesses operating in the digital economy, but they would have wider effect and would impact royalty payments made to low or no tax jurisdictions. Such payments would be subject to WHT (subject to the provisions of an applicable tax treaty), even if the group does not have a taxable UK presence. A consultation on the proposed rules will be published on 1 December 2017, which will have effect from 1 April 2019.

Changes to hybrid mismatch rules

The Chancellor announced some changes to the hybrid mismatch rules.

Two changes would take effect as from 1 January 2018. First, taxes charged at a nil rate would be disregarded for purposes of the hybrid mismatch rules; the second change would clarify the scope of the legislation with respect to multinational companies.

A number of other changes also were announced that would take effect as from 1 January 2017. These include a confirmation that WHT would be ignored for purposes of the hybrid mismatch rules, amendment of the potential restriction that may arise in deduction/non-inclusion arrangements involving hybrid payees in certain circumstances and a broadening of the circumstances in which ordinary income could be taken into account.

There is limited additional detail on the proposed changes and no draft legislation or updated guidance has been published.

Corporate interest restrictions

A number of changes have been announced to the corporate interest restriction (CIR) rules that were enacted and took effect from 1 April 2017. These changes generally are aimed at resolving unintended mismatches and making the “public benefit infrastructure exemption” more workable.

The CIR rules are complex, and following consultation with the UK tax authorities (HMRC) and HM Treasury, a number of potential mismatches and distortions between accounting and tax measures were identified. The proposed changes appear to deal with some of those issues, but others will remain, so further changes to the CIR rules can be expected, which companies will need to monitor.

No changes have been announced that should fundamentally affect the operation of these rules for most corporate groups.

Enhancing R&D tax credits

The research and development expenditure credit (RDEC) for large companies would become more generous, with the rate set to rise from 11% to 12% as from 1 January 2018. This change would increase the after-tax benefit of RDEC claims from 8.91% of amounts qualifying for RDEC to 9.72%. The reduction in the corporation tax rate in April 2020 would further boost the after-tax benefit to 9.96%. This increase in the RDEC rate is further evidence of the government’s continued support for investment in innovation and technology in the UK.

A new advance clearance service also would be piloted to provide pre-filing agreement for RDEC claims for three years, which will be welcomed by many companies.

Review of intangible asset regime

The UK's intangible asset regime has been in place for over 15 years and the government, therefore, has announced that it will consult on the regime, to assess whether any targeted changes should be made to ensure that it better supports businesses investing in intellectual property.

In addition, rules would be introduced in respect of transactions occurring on or after 22 November 2017 to ensure license arrangements between a company and a related party are treated by as occurring at market value and that cash and noncash transactions are treated consistently.

Chargeable gains

Freezing of indexation allowance

Under current law, companies disposing of chargeable assets (typically real estate assets) at a gain can index their original cost to take account of inflation. However, the Chancellor announced that indexation allowance would be frozen from 31 December 2017, with the effect that companies making disposals on or after 1 January 2018 would have their indexation restricted. This change is likely to increase gains when chargeable assets are sold after 1 January 2018.

Taxing nonresidents' gains on immovable property

The government announced that tax would be charged on gains made by nonresidents on disposals of all types of UK immovable property, extending existing rules that apply only to residential property.

Assets would be rebased to their value as at 1 April 2019, so that only gains after that date would be subject to the new rules. This measure would broaden the UK's tax base to include disposals of UK commercial property by nonresidents, both directly and indirectly (including where ownership is held through a land rich company).

An anti-forestalling rule would counteract certain arrangements entered into on or after 22 November 2017. In addition, the rules would be protected by a targeted anti-avoidance rule that would apply to all arrangements entered into where the main purpose, or one of the main purposes, is to secure a gain or gains not subject to the new rules.

This measure may have an impact on the measurement of deferred tax assets and liabilities. Any impact of deferred tax re-measurement should be recorded for IFRS and FRS 102 purposes when the legislation is substantively enacted, and for US GAAP purposes when it is enacted. Disclosure of the announcement and the associated impact also may be required in financial statements.

Change in deferred gains on branch assets

Existing legislation allows for the postponement of a tax charge that otherwise would arise where the trade and assets of a foreign branch of a UK company are transferred to an overseas group company. The postponed tax then becomes due following the disposal of the assets, or of the shares of the company holding the assets. Changes would be introduced to ensure that corporate reconstructions involving an exchange of shares in the overseas company do not crystallize the postponed tax charge.

Industry-specific measures

The Chancellor made a number of announcements relevant for specific industries, including the following:

- **Digital economy:** The government has published a position paper on how it thinks the corporate tax rules should respond to the modernization of the economy and deliver appropriate results for digital businesses that generate value in unique ways. Responses should be submitted by 31 January 2018.

  The Chancellor also reiterated the government's commitment to the OECD's and EU's deliberations on the taxation of the digital economy; however, the government also reserved its right to consider introducing a limited turnover-based tax if no international agreement is reached.
- **Oil and gas companies:** To support the oil and gas industry, a new transferable tax history (TTH) mechanism would be introduced for UK continental shelf oil and gas producers, for deals that complete on or after 1 November 2018. This new mechanism would allow companies selling North Sea oil and gas fields to transfer some of their tax payment history to the buyers that then would be able to offset the TTH against the cost of decommissioning the fields when they reach the end of their lives. The government expects this measure to provide new investors with certainty on the tax relief available for decommissioning costs.
- **Banks:** The Chancellor confirmed that the scope of the bank levy will be redefined, such that UK-headquartered banks would have the levy applied only to their UK balance sheet liabilities. This change would take effect for accounting periods ending on or after 1 January 2021.

Compliance

Change to installment payment dates for large companies

The government previously announced that the dates on which very large companies should make quarterly installments of corporation tax are to be brought forward by four months, for accounting periods ending on or after 1 April 2019. A company is classed as very large if its taxable profits in an accounting period exceed GBP 20 million, prorated by the number of companies in the worldwide group. For a 12-month accounting period, the payment dates, therefore, would involve an initial payment due two months and 13 days after the beginning of the accounting period and then three further payments made at three month intervals. Accordingly, for a calendar year-end company, installments would be paid during the accounting period on 14 March, 14 June, 14 September and 14 December.

Making tax digital

The government previously enacted rules on Making Tax Digital for Business (MTDfB), which require businesses, self-employed individuals and landlords to keep records digitally and update HMRC on a quarterly basis. It has been announced that only businesses with a turnover above GBP 85,000 per year would be required to use MTDfB from April 2019, and then only to meet their VAT obligations.

The government has confirmed that the earliest that MTDfB will be introduced for corporation tax would be 1 April 2020.

Multilateral instrument

The text of the OECD multilateral instrument (MLI) was adopted in November 2016 and now has been signed by over 70 countries, including the UK. The MLI modifies double taxation agreements both to prevent tax avoidance and improve dispute resolution. For the MLI to modify UK tax treaties, it must be given effect in UK law. Legislation will be introduced to amend the existing powers for giving effect to tax treaties in UK law, which previously have been used only to give effect to bilateral arrangements, to also give full effect to the MLI.

Payroll taxes

The government announced in Budget 2016 that legislation would be introduced to tackle disguised remuneration tax avoidance schemes. The majority of the changes announced at that time have been enacted, but following a consultation, other changes will be introduced. These include a new requirement for employees and self-employed individuals who have received a disguised remuneration loan to provide information to HMRC by 1 October 2019.

Indirect taxes

Legislation will be introduced to enable HMRC to hold online marketplaces jointly and severally liable for unpaid VAT relating to sales of goods in the UK. Other announced VAT changes are unlikely to have broad application to foreign-owned businesses.

Contacts

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